

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

ROB MACINNIS

PLAINTIFF

V.

CASE NO. 5:19-cv-05160-TLB

HALLEAHWOOD DESIGNS, LLC

DEFENDANT

PARTIAL MOTION TO DISMISS

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, Defendant Halleahwood Designs, LLC (“Halleahwood”), moves the Court to partially dismiss this action and for grounds states:

1. On or about August 20, 2019, plaintiff Rob Macinnis (“Plaintiff”) filed his complaint against Halleahwood alleging copyright infringement of a photograph characterized as depicting animals in a farm (“the Claimed Photograph”). As evidence of Plaintiff’s rights in the Claimed Photograph, the Plaintiff provides that the Claimed Photograph is registered with the United States Copyright Office and was given Registration No. VA-2-159-401 (“the 401 Registration”).

2. The complaint alleges, in part, that Plaintiff is entitled to statutory damages based on allegations that Halleahwood has willfully infringed the rights in the Claimed Photograph.

3. As shown by the 401 Registration, Plaintiff did not register the copyright in the Claimed Photograph until June 25, 2019.

4. The 401 Registration also provides that the Claimed Photograph was first published on December 01, 2013, nearly six years prior to the date of registration.

5. Plaintiff has failed to state a cognizable claim for statutory damages because, as provided in 17 U.S.C. § 412, statutory damages are only available where a copyright registration is obtained within three months of publication or before commencement of infringement.

6. Plaintiff has failed to allege that statutory damages are available under either standard in this case, and, in fact, cannot so establish because the registration was not obtained until nearly six years after publication and over one month after the allegedly infringing activities began.

7. Therefore, the complaint should be dismissed with regard to the claim for statutory damages.

8. Plaintiff supports this motion with the following:

- a. a copy of the 401 Registration showing both the date of publication of the Claimed Photograph and the date of registration, attached hereto as Exhibit A; and
- b. a contemporaneously filed brief in support.

WHEREFORE, defendant Halleahwood Designs, LLC requests that the Court dismiss the claim regarding statutory damages, award its costs and attorneys' fees incurred in defending this action, and grant it all other proper relief to which it is entitled.

Respectfully submitted,

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